

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:19-cv-00267-MR**

BRANDON M. PICKENS,

Plaintiff,

vs.

JASPER ROGERS, et al.,

Defendants.

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ORDER

THIS MATTER is before the Court on the Plaintiff's Amended Complaint [Doc. 14].

The *pro se* Plaintiff, who is presently incarcerated at the Avery Michell Correctional Institution, filed this civil rights action pursuant to 42 U.S.C. § 1983 in September 2019 addressing incidents that allegedly occurred at the Buncombe County Detention Facility ("BCDF") in August 2019. [Doc. 1]. The case was dismissed without prejudice for lack of prosecution on November 14, 2019.¹ [Doc. 10].

¹ This case was assigned to Judge Frank D. Whitney at that time.

The Plaintiff has now filed an undated Amended Complaint that was docketed on November 12, 2020. [Doc. 14]. The Plaintiff paid the \$402 filing fee on January 21, 2021.

Rule 15 of the Federal Rules of Civil Procedure governs amendments. However, Rule 15 “does not contemplate the amendment of a complaint in a closed case.” Grant v. U.S. Dep’t of Def., 2018 WL 10733630, at *1 (E.D. Va. Nov. 16, 2018) (denying *pro se* plaintiff’s motion to amend in a closed case); see also Chambers v. Psych, 2019 WL 6340959 (S.D.N.Y. Nov. 26, 2019) (dismissing *pro se* motion to amend as moot in a closed case); Page v. Birkett, 2009 WL 1097812 (E.D. Mich. April 22, 2009) (denying *pro se* prisoner’s motions to amend because the case was already closed). Therefore, the Amended Complaint will be dismissed.

The Court will, however, instruct the Clerk of Court to mail the Plaintiff a blank § 1983 complaint form so that the Plaintiff may commence a new civil action should he choose to do so. If the Plaintiff files a complaint in a new civil case within 30 days of this Order, the Clerk of Court shall transfer the Plaintiff’s \$402 filing fee to the new case.² However, if the Plaintiff fails to do so, the Clerk of Court shall refund the filing fee to the Plaintiff.

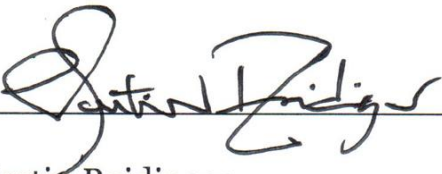
² If the Plaintiff files a complaint in a new civil case in accordance with this Order, he should refer to the instant Order to ensure that the filing fee is transferred.

IT IS, THEREFORE, ORDERED that the Plaintiff's Amended Complaint [Doc. 14] is **DISMISSED**.

The Clerk is instructed to mail Plaintiff a blank prisoner § 1983 complaint form. In the event that the Plaintiff files a new complaint within 30 days of this Order, the Clerk is instructed to transfer the \$402 filing fee to that new civil action. If the Plaintiff fails to file a new complaint within the time required, the Clerk is instructed to refund the filing fee to the Plaintiff.

IT IS SO ORDERED.

Signed: January 25, 2021



Martin Reidinger
Chief United States District Judge

